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11 Proposed Plaintiffs' Co-Lead Counsel

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15
16 **PAUL MEOLA**, individually, and on
17 behalf of himself and all others similarly
18 situated,

19 Plaintiff,

20 vs.

21 **AXA FINANCIAL, INC.; AXA**
ADVISORS, LLC; AXA EQUITABLE
22 **LIFE INSURANCE CO.; and DOES 1**
through 10, inclusive,

23 Defendants.
24
25
26
27
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No. C06-04291-JSW

CLASS ACTION

**MOTION FOR APPOINTMENT
OF LEAD COUNSEL;
MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: November 30, 2007

Time: 9:00 a.m.

Courtroom: 2

Hon. Jeffrey S. White

CARLTON M. LENNON, individually, and
on behalf of all other members of the general
public similarly situated, **JAMES L.**
THOMPSON, individually, and on behalf of
all other members of the general public
similarly situated,

Plaintiffs,

vs.

AXA ADVISORS, LLC; AXA
NETWORK, LLC; and DOES 1 through 20,
inclusive,

Defendants.

No. 07-01858 JSW

ANTHONY BOLEA, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

AXA ADVISORS, LLC and **AXA**
EQUITABLE LIFE INSURANCE CO.,

Defendants.

No. C07-02777 JSW

HARKANT DHRUV, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

AXA EQUITABLE LIFE INSURANCE
CO., et al.

Defendants.

No. C07-04368-JSW

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 30, 2007 at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Jeffery S. White in Courtroom 2 of the United States District Court, Northern District of California, located at 450 Golden Gate Ave., San Francisco, CA 94122, Plaintiffs Paul Meola ("Meola"), Carlton M. Lennon ("Lennon"), James L. Thompson ("Thompson"), Anthony Bolea ("Bolea"), and Harkant Dhruv ("Dhruv"), (collectively "Plaintiffs"), will and hereby do move the Court for appointment of the law firms of Cotchett, Pitre & McCarthy and Schiffrin Barroway Topaz & Kessler, LLP, as Co-Lead Counsel, in conformity with the stipulated proposed Pretrial Order No. 1.

A copy of this Notice of Motion and Motion is being served on all counsel who have appeared in the above listed cases.

This Motion is made on the grounds that it will serve the interests of judicial economy and efficiency. Cotchett, Pitre & McCarthy and Schiffrin Barroway Topaz & Kessler LLP both will effectively and efficiently manage this litigation for Plaintiffs and both firms have extensive experience in complex cases and employment litigation, including wage and hour litigation.

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declarations of Niall P. McCarthy and Gerald D. Wells, III, the pleadings and other files herein, and such other argument as may be permitted by the Court.

There have been discussions among Plaintiffs' counsel who all agree to the entry of the order. Defendants have been notified of the Motion and agree to the entry of proposed Pretrial Order No. 1. Declaration of Gerald D. Wells ("Wells Decl."), ¶ 13.

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STATEMENT OF RELIEF SOUGHT

Through this motion, plaintiffs seek appointment of the firms of Cotchett, Pitre & McCarthy and Schiffrin Barroway Topaz & Kessler, LLP as Co-Lead Counsel.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For the benefit of the Court, the parties, and the fair, efficient and economical resolution of these actions, the Court should appoint the law firms of **Cotchett, Pitre & McCarthy** and **Schiffrin Barroway Topaz & Kessler, LLP** as Plaintiffs' Co-Lead Counsel in these actions. Such appointment should be made because of both firms': (1) experience in complex cases, (2) ability to fairly, efficiently and economically represent the interests of all Plaintiffs and Plaintiffs' counsel; and (3) understanding of their obligations to the Court and the judicial system by accepting the responsibility of Co-Lead Counsel. Declaration of Niall P. McCarthy ("McCarthy Decl."), ¶¶ 1-8 and Exhibits A-F; Wells Decl., ¶¶ 3-12 and Exhibit A.

II. BACKGROUND OF ACTIONS

These cases (collectively "*AXA Wage and Hour Cases*") all involve allegations that brokers employed by Defendants are entitled to overtime pay under federal and/or state law. The Honorable Jeffery S. White of this Court has issued orders relating all of these cases:

On May 17, 2007, the Honorable Jeffery S. White of this Court entered an order relating *Meola v. AXA Financial, Inc., et al.* (C06-04291) to *Lennon v. AXA Advisors, LLC, et al.* (C07-01858). McCarthy Decl., ¶ 8 and Exhibit G.

On August 29, 2007, the Honorable Jeffery S. White of this Court entered an order relating *Bolea v. AXA Advisors, LLC, et al.* (C07-02777) with *Meola v.*

1 *AXA Financial, Inc., et al.* (C06-04291) and *Lennon v. AXA Advisors, LLC, et al.*
2 (C07-01858). McCarthy Decl., ¶ 8 and Exhibit H.

3 On September 7, 2007, the Honorable Jeffery S. White of this Court entered
4 an order relating *Dhruv v. AXA Equitable Life Insurance Company, et al.* (C07-
5 04368) with *Meola v. AXA Financial, Inc., et al.* (C06-04291). McCarthy Decl., ¶
6 8 and Exhibit I.

7 Concurrent with this motion, the parties are filing a proposed Pretrial Order
8 No. 1, which reflects this consolidation.

9 **III. APPOINTMENT OF CO-LEAD COUNSEL IS APPROPRIATE**

10 The ability of the court to select lead counsel is firmly established. *Vincent*
11 *v. Hughes Air West, Inc.*, 557 F.2d 759, 774 (9th Cir. 1977).

12 Accordingly, this Court is empowered to, and Plaintiffs suggest that the
13 Court should, appoint co-lead counsel in this proceeding in order to effectively
14 manage these cases, to avoid duplication of efforts, and to protect the interests of
15 the Plaintiffs.

16 Plaintiffs respectfully submit that the Cotchett, Pitre & McCarthy and
17 Schiffrin Barroway Topaz & Kessler, LLP firms be appointed as Co-Lead
18 Counsel. Both firms have the resources, commitment, experience and ability to
19 prosecute this litigation up to and including trial, as evidenced by the firms'
20 successes in numerous other complex civil cases. Further, both firms have
21 extensive experience in successfully representing both plaintiffs and defendants in
22 complex cases, including in employment matters. *See* McCarthy Decl., ¶¶ 4-7 and
23 Exhibits A-B; Wells Decl., ¶¶ 3-12 and Exhibit A.

24 As set forth in these declarations, both firms have served as lead counsel in
25 many complex actions and will strive to effectively and efficiently manage this
26 litigation for the Plaintiffs so as to preserve the Court's valuable time and
27 resources.

1 The Cotchett, Pitre & McCarthy and Schiffrin Barroway Topaz & Kessler,
 2 LLP firms are also committed to utilizing the skills of the other Plaintiffs' firms to
 3 successfully prosecute this action. There can be no dispute that a joint prosecution
 4 is the most efficient way to further the interests of the plaintiffs, as well as to serve
 5 the interests of judicial economy. These firms will work to focus the plaintiffs'
 6 energy and resources against the defendants, and not one another.

7 **1. Cotchett, Pitre & McCarthy**

8 **Cotchett, Pitre & McCarthy**, with offices in the San Francisco Bay Area,
 9 Los Angeles and the East Coast, has over forty years experience in class action
 10 and complex litigation, including trying consolidated class action cases. Niall P.
 11 McCarthy, in particular, has served as co-lead counsel in several major class and
 12 consolidated actions in which the classes recovered multi-million dollar awards.
 13 These include: *In re Citigroup Loan Cases*, J.C.C.P. No. 4197 (San Francisco
 14 Cnty. Sup. Ct. 2003) (nationwide consolidated class settlement of \$240 million
 15 on behalf of mortgage "flipping" and "packing" victims); *In re Household*
 16 *Lending Litigation*, No. C 02-1240 (N.D. Cal. 2003) (nationwide class settlement
 17 worth approximately \$150 million on behalf of predatory lending victims); *Old*
 18 *Republic Consumer Fraud Litigation*, Nos. 996705, 996929 (San Francisco Cnty.
 19 Sup. Ct. 2001) (\$14 million jury verdict for consolidated consumer class).

20 Nancy L. Fineman has over twenty years experience litigating complex
 21 cases, representing both plaintiffs and defendants. She currently is one of the lead
 22 attorneys representing the Independent Plaintiffs in *In re Natural Gas Antitrust*
 23 *Cases I, II, III and IV (JCCP)* (San Diego County Superior Court). She has
 24 previously been class counsel for municipalities and counties suing PG&E for
 25 underpayment of franchise fees.

26 Cotchett, Pitre & McCarthy also has significant experience handling
 27 employment matters, including wage and hour litigation. Presently, for example,
 28

1 the firm is handling a wage/hour employment case with issues involving
 2 nationwide significance. The firm was recently appointed co-lead counsel in, *In re*
 3 *Wachovia Securities, LLC, Wage and Hour Litigation*, MDL No. 1807, Master
 4 File No. 05-CV-1031-DOC (C.D. Cal.), a consolidated action in the Central
 5 District of California with significant similarities to the instant case before the
 6 Court. Both Mr. McCarthy and Ms. Fineman are involved in the case. Other
 7 examples of the firm's cases are attached as Exhibit B to the McCarthy Decl.

8 Both federal and state courts have recognized the ability of the Cotchett,
 9 Pitre & McCarthy firm to efficiently and effectively represent Plaintiffs in
 10 complex cases. See Exhibits C-G to the McCarthy Decl. For example, in *In re*
 11 *Louisiana Pacific Corp. Inner-Seal OSB Trade Practices Litigation*, the
 12 Honorable Vaughn Walker, Chief United States District Judge for the Northern
 13 District of California, stated: "The Cotchett firm, in particular, has appeared before
 14 the court in other actions and the performance of its attorneys to date in this and in
 15 other cases is a testament to the ability of these attorneys." *Id.*, Exhibit C at p.
 16 6:24-27. The Honorable Anthony J. Mohr of the Los Angeles County Superior
 17 Court in the Order Approving Award of Attorneys' Fees, Costs, and Class
 18 Representative Incentive Payments stated in *Banks v. Northern Trust Bank of*
 19 *California*: "Class Counsel have achieved an **excellent** result for the settlement
 20 class, . . . Class Counsel applied **extraordinary skill and thoughtfulness** in
 21 fashioning the complex settlement package and communicating it thoroughly and
 22 clearly to the class; . . ." *Id.*, Exhibit E at pp. 2:12, 3:13-14 (emphasis by court).

23 **2. Schiffrin Barroway Topaz & Kessler, LLP**

24 **Schiffrin Barroway Topaz & Kessler, LLP** ("SBTK"), with its principal
 25 office located outside of Philadelphia, Pennsylvania, specializes in complex class
 26 action litigation, representing investors, employees and consumers in class actions
 27 pending in state and federal courts throughout the United States. During the
 28

1 firm's successful history, SBTk has recovered billions of dollars on behalf of its
2 clients and class members. SBTk is comprised of over 60 attorneys and a
3 substantial support staff (consisting of paralegals, in-house investigators, clerks
4 and administrative personnel).

5 In addition to its experience in prosecuting complex wage and hour cases,
6 SBTk has extensive experience and expertise in large, complex class actions in
7 such areas as securities, mergers and acquisitions, ERISA, consumer fraud and
8 antitrust, and in shareholder derivative suits and mass tort litigation. SBTk is one
9 of the largest and most successful plaintiffs' class action firms in the United
10 States. SBTk is acting as lead or co-counsel in many large class actions and has
11 extensive experience in multidistrict litigation.

12 The firm was selected by the State of New Jersey to represent the State's
13 interests in a securities class action against Tenet Healthcare. *In re Tenet*
14 *Healthcare Corp. Sec. Litig.*, C.A. No. 02-8462-RSWL (partial settlement of over
15 \$200 million). Further, the firm currently serves as Co-Lead Counsel in *In re:*
16 *Tyco International, Ltd. Securities Litig.*, MDL No. 02-1335-PB (D. N.H.)
17 (settlement in excess of \$3 billion granted preliminary approval).

18 Moreover, the firm's Employment and Labor Law Group is one of the
19 foremost in the country and serves as lead or co-counsel in numerous
20 class/collective actions. Specifically, the firm represents clients in several actions
21 that are directly analogous to the above-captioned matters, including numerous
22 cases involving an alleged failure to pay overtime wages. *See e.g., In re: Janney*
23 *Montgomery Scott, LLC Financial Consultant Litig.*, No. 2:06 CV 03202 (E.D.
24 Pa.). SBTk has participated in multiple proceedings before an MDL panel in
25 directly analogous actions involving nationwide claims, *see In Re Wachovia*
26 *Securities, LLC Wage & Hour Litig.*, MDL-1807, No. 05-CV-1031-DOC (C.D.
27 Cal.), and participated in complex mediation proceedings involving analogous
28

1 national claims. *See e.g., Ellis v. Edward D. Jones & Co., L.P.*, No. 3:06 CV
2 66-KRG (W.D. Pa.). Due to its depth of experience, SBTk has been appointed
3 lead or co-lead counsel in several directly analogous cases. *See, e.g., In re M.L.*
4 *Stern Overtime Litig.*, No. 07-118-BTM (JMA) (S.D. Cal.) (appointing SBTk as
5 lead counsel in analogous case). Further, SBTk is currently one of only six firms
6 chosen to serve on the Plaintiffs' Executive Committee in *In re Wachovia*
7 *Securities, LLC Wage & Hour Litig.*, MDL-1807, No. CV05-1031 DOC (RNBx)
8 (C.D. Cal.), widely considered one of the largest stock broker wage and hour cases
9 currently pending.

10 SBTk's experience will prove invaluable to all phases of the prosecution of
11 this case. *See e.g., Nowak v. Ford Motor Co.*, No. 06-11718, 2006 WL 3870399,
12 *6 (E.D.Mich. Dec. 22, 2006) (appointing SBTk as co-lead counsel and noting the
13 firm's "high level" of expertise and willingness to commit the "firm's resources"
14 to the case). Indeed, the firm has extensive experience not only at the trial court
15 level but also before appellate courts. *See In re Schering-Plough Corp. ERISA*
16 *Litig.*, 420 F.3d 231, *amended by* No. 04-CV-3073, 2005 U.S. App. LEXIS 19826
17 (3d Cir. Sept. 15, 2005).

18 Moreover, experience in this area also means that the firm's Employment &
19 Labor Law Group is well-versed in conducting discovery relevant to these types of
20 actions. SBTk is able to intake and process large volumes of relevant information
21 in an efficient manner. In addition, the firm has worked extensively with
22 investigators (in-house and third party), experts and other consultants in the course
23 of discovery, in responding to dispositive motions (including summary judgment
24 motion practice) and in exploring settlement alternatives for all types of cases.

25 SBTk is committed to expending all resources necessary to achieve the best
26 possible results for its clients and class members and has adopted a high standard
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1 that guides its prosecutorial efforts, including a commitment to producing only the
2 highest quality work product.

3 SBTk has an office in Walnut Creek, California, which will allow the firm
4 to allocate resources in the case in a cost-effective and efficient manner. The
5 SBTk attorneys based in California, Alan R. Plutzik, Robert M. Bramson and L.
6 Timothy Fisher, have decades of experience litigating complex class actions in
7 both state and federal courts in California, including wage and hour class actions.
8 Further information can be found in SBTk's firm resume, a true and correct copy
9 of which is attached to the Wells Decl. as Exhibit A.

10 **V. CONCLUSION**

11 For all the foregoing reasons, plaintiffs respectfully requests that this Court
12 enter the proposed Pre-Trial Order No. 1 and appoint Cotchett, Pitre & McCarthy
13 and Schiffrin Barroway Topaz & Kessler LLP as Co-Lead Counsel on behalf of
14 Plaintiffs.

15
16 Dated: October 5, 2007

COTCHETT, PITRE & McCARTHY

17
18 By: /s/ Niall P. McCarthy
19 NIALL P. McCARTHY

20 **SCHIFFRIN BARROWAY TOPAZ**
21 **& KESSLER, LLP**

22
23 By: /s/ Gerald D. Wells, III
24 GERALD D. WELLS, III

25 *Proposed Plaintiffs' Co-Lead Counsel*
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